

RAS 8757

November 2, 2004
DOCKETED 11/03/04

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket Nos. 50-390-CivP;
)	50-327-CivP; 50-328-CivP;
TENNESSEE VALLEY AUTHORITY)	50-259-CivP; 50-260-CivP;
)	50-296-CivP
(Watts Bar Nuclear Plant, Unit 1)	
Sequoyah Nuclear Plant, Units 1 & 2)	ASLBP No. 01-791-01-CivP
Browns Ferry Nuclear Plant, Units 1, 2 & 3)	
)	EA 99-234

JOINT MOTION TO APPROVE SETTLEMENT
AGREEMENT AND TERMINATE PROCEEDING

INTRODUCTION

Pursuant to 10 CFR § 2.203, Tennessee Valley Authority (TVA) and the Nuclear Regulatory Commission (NRC) Staff respectfully submit this joint motion requesting the Atomic Safety Licensing Board (Board) to approve the attached Settlement Agreement, dated October 29, 2004, and terminate the above-captioned proceeding.

DISCUSSION

On February 7, 2000, the NRC Staff issued an Notice of Violation (NOV) citing the TVA for a violation of 10 CFR § 50.7 and in a May 4, 2001 order imposed a civil penalty of \$110,000. Also on February 7, 2000, the NRC Staff issued related NOV's to two individuals, both TVA managers, for violations of 10 CFR § 50.5. TVA requested a hearing requested a hearing before the Board. A hearing before the Board was held between April 23, and September 13, 2002. The Board rendered a decision on June 26, 2003, LBP-03-10, in which it sustained the NOV against TVA and sustained the civil penalty, which it mitigated from \$110,000 to \$44,000. After TVA appealed the Board decision, the United States Nuclear Regulatory Commission (Commission) issued a Memorandum and Order, CLI-04-24, dated August 18, 2004, affirming in part and reversing in part the Board decision and remanding the case to the Board.

The parties entered into negotiations which resulted in the attached Settlement Agreement. The Settlement Agreement provides, in part, that the NOV against TVA remains in effect and that the civil penalty and the two individual NOVs are withdrawn. Further, TVA represents that it has taken action to foster a safety conscious work environment (SCWE). TVA's actions related to SCWE are stated in more detail in the Settlement Agreement. The NRC Staff has reviewed TVA's actions and finds that, subsequent to the events that gave rise to the above-mentioned matters, TVA has committed to fostering SCWE and that its actions in that regard are acceptable for promoting the public health and safety. Accordingly, the NRC Staff is satisfied that its goals of identifying and effecting lasting corrective action have been addressed by TVA's actions. TVA and the NRC Staff state that it is in the public interest to terminate this proceeding without further litigation, subject to the approval of the Board.

CONCLUSION

Inasmuch as the parties have determined to settle the matters at issue in this proceeding and such settlement is in the public interest, the parties request that the Board approve the attached Settlement Agreement and terminate the above-captioned proceeding.

Respectfully submitted,

/RA/

Sara McAndrew
Counsel for NRC Staff

***/RA by Sara McAndrew for and
with permission of/***

Brent R. Marquand
Counsel for Tennessee Valley Authority

Dated at Rockville, Maryland
this 2nd day of November, 2004

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CERTIFICATE OF SERVICE

I hereby certify that copies of JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT AND TERMINATE PROCEEDING in the above-captioned proceeding have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), or by electronic mail as indicated by a double asterisk (**) on this 2nd day of November, 2004.

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/RA/

Sara McAndrew
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October 29, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket Nos.	50-390-CivP;
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SETTLEMENT AGREEMENT

The Tennessee Valley Authority (TVA) and Nuclear Regulatory Commission (NRC) Staff, (individually, "party" and together, "parties") enter into this Settlement Agreement freely and voluntarily and state as follows:

1. Whereas on February 7, 2000, the NRC Staff issued a Notice of Violation (NOV) citing TVA for a violation of 10 CFR §50.7 (Section 50.7) and, in a May 4, 2001, order imposed a civil monetary penalty (civil penalty) of \$110,000.

2. Whereas on February 7, 2000, the NRC Staff also issued related NOVs to two individuals, both TVA managers, for violations of 10 CFR §50.5 (Section 50.5).

3. Whereas at the time of issuance of the NOVs, the NRC Staff had a good faith basis for taking such enforcement actions.

4. Whereas at the time the NOVs were issued, TVA disagreed and continues to disagree that it violated Section 50.7 and that its two managers cited in the individual NOVs violated Section 50.5, and, requested a hearing before the Atomic Safety Licensing Board (the Board).

5. Whereas between April 23 and September 13, 2002, the parties participated in a hearing before the Board.

ATTACHMENT

6. Whereas the Board rendered a decision on June 26, 2003, LBP-03-10, in which it sustained the NOV against TVA and sustained the civil penalty, which it mitigated from \$110,000 to \$44,000.

7. Whereas after TVA appealed the Board decision, the United States Nuclear Regulatory Commission (Commission) issued a Memorandum and Order, CLI-04-24, dated August 18, 2004, affirming in part and reversing in part the Board decision and remanding the case to the Board.

8. Whereas the relevant events in this matter occurred some years ago; the employee/allegor and one of the managers named in the individual NOV are no longer employed by TVA; and the other manager named in the individual NOV no longer occupies the position he held at times relevant to the above-captioned matters.

9. Whereas subsequent to events giving rise to the above-referenced matters, TVA's nuclear organization (TVAN) has taken actions toward fostering and maintaining a safety conscious work environment (SCWE) as follows: no discrimination complaints have been filed with NRC Staff against TVAN in the last two years; TVAN represents that it has periodically provided SCWE/employee protection training to its workforce, such as "Do What's Right" training and, during recent weeks, "Employee Protection & Promoting A Safety Conscious Work Environment" training for TVAN's supervisory managers; TVA represents that it has trained the majority of TVAN's supervisory managers and intends to complete the training of such managers in the near future; and TVAN represents that it has revised its job selection process to provide increased objectivity.

10. Whereas NRC Staff has reviewed the TVA Office of Inspector General "Audit Report: Concerns Resolution Program-TVA Nuclear 2004," dated August 16, 2004, which found that TVA employees with unescorted access to TVA's nuclear facilities generally felt free to raise nuclear safety and quality issues, which is consistent with the NRC Staff's data that no discrimination complaints were filed with NRC Staff about TVAN within the last two years; the NRC Staff has reviewed TVA guidance on job selection process and observed that it is intended to promote

objectivity in the selection process; the NRC Staff has reviewed materials used by TVA in training its managers on SCWE and finds them to be appropriate; and NRC Staff plan to verify the quality of manager training by observing training sessions at a time mutually agreeable to the parties.

11. Whereas the parties have engaged in negotiation and agree that it is in the public interest to terminate this proceeding without further litigation, subject to approval of the Board.

NOW THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

A. The NOV against TVA, issued February 7, 2000, remains in effect. Further, effective upon the execution of this Settlement Agreement, the NRC Staff, exercising its discretion pursuant to Section VII B.6 of the NRC Enforcement Policy, hereby withdraws the civil penalty against TVA as well as the February 7, 2000, NOVs issued to the two individuals.

B. Each party waives its rights to proceed on the above-captioned matters and matters that are or could be based on the facts that gave rise to the above-mentioned matters before the Board, the Commission and in any other forum, including seeking judicial review.

C. The NRC Staff finds that subsequent to the events that gave rise to the above-captioned matters, TVA has committed to fostering a safety conscious work environment as evidenced by the recent training of managers described above, the 2004 TVA OIG Audit on employee concerns and the revised job selection process and that the NRC Staff finds that these actions are acceptable for promoting the public health and safety. Accordingly, subject to the verification of training discussed in Paragraph 10 above, the NRC Staff is satisfied that its goals of identifying and effecting lasting corrective action have been addressed by TVA whose actions provide reasonable assurance that a SCWE will be maintained. Consequently, the NRC Staff finds no need for further corrective action by TVA.


D. In light of the actions taken and SCWE fostered by TVAN described in Paragraphs 9 and 10 above, corrective actions by TVA that may have been otherwise warranted in connection with a matter related to the above-captioned matters are not now required and the NRC Staff agrees not

ATTACHMENT

F. TVA recognizes the importance of fostering a safety conscious work environment and affirms its commitment to do so.

H. The parties will submit this Settlement Agreement to the Board for its approval together with a Joint Motion to Approve Settlement and Terminate Proceeding with the Board based on the resolution of matters in this Settlement Agreement. This Settlement Agreement will become effective upon its execution by both parties; however, the Settlement Agreement is contingent upon its approval by the Board and will become null and void if not approved or is changed in any manner by the Board. The parties agree that if the Board does not approve this Settlement Agreement, they will negotiate in good faith to resolve any obstacles to its approval by the Board.

IN WITNESS WHEREOF, TVA and the NRC Staff have caused this Settlement Agreement to be executed by their duly authorized representatives on the dates shown below.

<i>/RA/</i>	10/29/04		10/29/04
James Luehman	Date	John C. Fornicola	Date
Deputy Director, Office of Enforcement		Manager, Nuclear Assurance and Licensing	
NRC Staff		Tennessee Valley Authority	